

**Maryland Court of Special Appeals
Alternative Dispute Resolution
Mediation Program Guidelines**

The Court of Special Appeals utilizes its mediation program for civil cases giving parties the opportunity to resolve their appeal, in whole or in part, before undergoing what can be a more expensive and lengthy process. In confidential mediation sessions, experienced mediators will help the parties explore a broad range of opportunities to enter into mutually satisfactory agreements. These agreements may be creative and may address issues the Court is not able to entertain on appeal. If the parties do not reach a complete agreement, the appeal will proceed as to all unresolved issues.

The mediation program operates within the purview of the prehearing conference program and rules. Since 1988, the Court of Special Appeals has operated a prehearing conference program under authority of Maryland Rules 8-205 and 8-206. In all civil actions in the Court of Special appeals (except juvenile causes, appeals from guardianships terminating parental rights, and applications and appeals by prisoners seeking relief relating to confinement or conditions of confinement) the appellant is required to file an information report with the clerk of the Court of Special Appeals, and the appellee may file a supplemental report with the clerk of the Court. Information submitted in the information report and supplemental report is confidential in that such information may not be referred to except at a prehearing or scheduling conference, cannot be treated as an admission, and does not limit the disclosing party in presenting or arguing that party's case. See Maryland Rule 8-205(f).

Following receipt of the information report, the Court of Special Appeals enters an order indicating either that the appeal proceed without a prehearing or scheduling conference, or that the parties, their attorneys, or both the parties and their attorneys appear before a judge of the Court for a prehearing conference or a scheduling conference.

The purpose of mediation is to discuss settlement, dismissal of the appeal, limitation of the issues, and other pertinent matters. Information disclosed within the prehearing conference is confidential as described within Rule 8-206(b). Parties or attorneys required to comply with the information report and prehearing conference rules are subject to sanctions by the Court of Special Appeals in accordance with Rule 8-206 (e).

Cases Eligible for Mediation

All civil cases eligible for prehearing conferences under Maryland Rules 8-205 and 8-206 are eligible for mediation.

Administration of the Program

The Director of ADR Programs (“Director”) administers the prehearing conference and mediation programs and reports directly to the Chief Judge of the Court of Special Appeals. The Director is expected to have extensive mediation experience, program management experience and skills, strong communication and interpersonal skills, the ability to work well with diverse populations, legal experience, and the capacity to serve as an able advisor to the Court with regard to the effective operation and management of the mediation process. The Director, or his/her designee, ordinarily will co-mediate with mediator judges. The Director is also responsible for tracking the cases through mediation and for compiling information to enable the Court to monitor the effectiveness of the program.

Case Selection

Information reports and supplemental information reports submitted to the Clerk of the Court of Special Appeals pursuant to Rule 8-205 will be screened by the Director, or his/her designee, who will make a recommendation for cases to be ordered to mediation. The Director may also consider the judgment or order on appeal, any opinion by the court issuing the judgment or order, the issuing court’s docket entries, relevant pleadings, confidential statements submitted by the counsel or parties (including requests for mediation), conversations with counsel or parties, and any other available and relevant information to determine whether a case appears potentially amenable to settlement.

Order for Prehearing Conference -- Mediation

Cases selected for mediation will be referred to mediation by an order for prehearing conference for mediation. Pursuant to Maryland Rules 8-411 (b) and 8-412 (a) (1), the appellate calendar will be stayed from the time the order to prehearing conference for mediation is entered until an order to proceed is entered. Cases that are not initially selected may, nevertheless, be referred to mediation upon a request to the Director of one or more of the parties or their attorneys, at the time of filing an information report or supplemental information report, or at any stage in the appeal process. Such party or attorney requests for mediation will be confidential. Parties may

seek to avoid mediation by filing a request to vacate the order referring the case to mediation. The request may be informal, similar to the current practice under Rule 8-206. The request should be presented to the Director. If such a request contains confidential information, the Director must be made aware of that fact so that confidentiality will be preserved. By stipulation, parties generally may request that the Chief Judge designate a particular mediator from the Court's roster of available mediators, or request that one or more such mediators not be assigned to their case. If the parties do not agree on a mediator, the Court will designate a mediator from the Court's roster.

In all cases ordered to mediation, counsel for the appellant and appellee and self-represented parties may be required to submit a confidential pre-mediation information statement to the Director to assist in preparation for the mediation. The Director and/or the assigned co-mediator may request that the parties and/or attorneys submit additional information to the case prior to any mediation session. Such requests may be made by written or telephone communications or in pre-mediation meetings. In some instances the Court may vacate the order for prehearing conference for mediation, upon recommendation of the Director following pre-mediation activities, if the Director determines that mediation would not likely be of value. With the limited exceptions stated in "Confidentiality" below, all information submitted in the confidential pre-mediation information statement and supplemental information subsequently requested or provided, whether written or oral, will be confidential, unless such confidentiality is waived by the submitting party. The Court requires that all parties, their representatives having full authority to settle (including insurance carriers and others), and their primary appellate counsel be present and participate in all mediation sessions. Public entities may be represented by the physical presence of a representative with full authority to negotiate and to recommend settlement to the public entity. Parties or attorneys failing to comply with orders for mediation may be subject to sanctions by the Court of Special Appeals.

Mediation Roster

Recalled judges, and on occasion incumbent judges on this Court, may serve as mediators. All judges serving as mediators for the program will have received an orientation to the program and specialized training in appellate mediation, which will be provided by the Court. In most cases, the Director or his/her designee will serve as co-mediator with the designated judge. All mediators participating in the mediation program shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation.

Mediation Approach

Generally, mediators will use a facilitative approach. Nevertheless, the term mediation, as used in this program, is broad and is not limited to the definition contained in Maryland Rule 17-102, applicable to alternative dispute resolution proceedings in circuit courts. The mediators will serve as neutral facilitators in all phases of the mediation. If the parties request, and the mediators determine that it may be effective after other approaches have failed, the persons who serve as the mediators may offer opinions as to the likely outcome of the appeal and may recommend the terms of a settlement.

All counsel and parties and representatives are expected to participate in mediation to resolve their conflict, and are expected to participate in the initial mediation session for at least four hours unless resolution is earlier realized or the mediators, counsel, parties and representatives determine that there is no substantial value in continuing the mediation. If progress is being made, and all parties consent, the Director may schedule a subsequent session.

Confidentiality

The mediators, and all other persons employed or designated by the Court to participate on behalf of the mediation program, shall maintain the confidentiality of all mediation communications, and may not disclose or be compelled to disclose such communications with the exceptions noted below. The parties will have the opportunity to sign a confidentiality agreement. A document signed by the parties that reduces to writing an agreement reached by the parties as a result of mediation is not confidential unless the parties agree in writing to exclude the document from public disclosure. In addition to any disclosures required by law, a mediator and a party may disclose or report mediation communications to a potential victim or to the appropriate authorities to the extent that they believe it necessary to help prevent serious bodily harm or death, to assert or defend against allegations of mediator misconduct or negligence, or to assert or defend against a claim or defense that because of fraud, duress, or misrepresentation, a contract arising out of a mediation should be rescinded. If there is no settlement at mediation, neither the parties, their counsel, or representatives may disclose or be compelled to disclose any communications from the mediation in the appeal or any subsequent litigation unless otherwise admissible. The Director may communicate to the Court that a mediation has occurred or has terminated, whether required parties have attended and participated in the mediation and have provided information as requested, whether an agreement was reached, and whether further mediation is recommended or the mediation should be terminated.

Mediation Cost

There is no court fee associated with mediation at the Court of Special Appeals. Recalled judges may provide mediation services and will be compensated by the Judiciary in the same manner as are all recalled judges. The Director and his/her designees will provide pre-mediation, mediation, management and other related services as described in these guidelines as part of their regular work for the Judiciary.

Location of Mediation Sessions

Mediation sessions will normally occur at the Judicial Education and Conference Center, 2009D Commerce Park Drive, Annapolis, Maryland 21401.

Case Time Line

Mediation will be integrated into the appeal process. Mediation, if successful, should substantially shorten the normal time required to pursue an appeal to decision. When a case is referred to mediation, the appellate process (including ordering transcripts and filing of briefs) will be stayed until the mediation is terminated. The goal for a total mediation process time is six to eight weeks. Cases that do not settle during mediation will continue through the normal appellate process.

Mediation Program Forms

The Court of Special Appeals may develop, revise, distribute and use such forms as are necessary or helpful for the effective management and administration of the program.